

# Law Office of Jack Silver

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JUL 14 2017



**Via Certified Mail –  
Return Receipt Requested**

July 10, 2017

Ms. Cari Dale - Water Utilities Director  
Head of Agency  
Water Utilities Department  
City of Oceanside  
300 N Coast Hwy.  
Oceanside, CA, 92054-2824

Ms. Michelle Skaggs Lawrence - City Manager  
Members of the City Council  
City of Oceanside  
300 N Coast Hwy.  
Oceanside, CA 92054-2824

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution  
Control Act (Clean Water Act)**

Dear Ms. Dale, Ms. Lawrence, Head of Agency, and Members of the City Council:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the City of Oceanside's sewage collection system and the various facilities covered under its National Pollution Discharge Elimination System ("NPDES") Permit No. CA0107433 (the San Luis Rey Water Reclamation Facility at 3950 North River Road, the La Salina Wastewater Treatment Plant at 1330 S. Tait Street, and the Mission Basin Groundwater Purification Facility at Fireside and Heritage Streets (collectively the "Facilities")), and under NPDES Permit No. CAS0109266 for its MS4 stormwater collection system.

River Watch hereby places the City of Oceanside (“Oceanside”), as owner of the Facilities and collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against Oceanside for continuing violations of its NPDES permits pursuant to CWA § 301(a), 33 U.S.C. § 1311(a).

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes Oceanside, which has been issued permits pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges Oceanside violates the CWA by violating the terms of its NPDES permits.

The CWA provides that the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits.

The entity responsible for issuing NPDES permits and otherwise regulating Oceanside’s operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Diego Region (“RWQCB-San Diego”).

While delegating Regional Boards to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by Oceanside with the CWA.

## **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

**1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated**

The orders violated are NPDES Permit Nos. CA0107433 and CAS0109266. River Watch has identified specific violations of Oceanside's NPDES permits including raw sewage discharges and the failure of Oceanside to either comply with or provide evidence that it has complied with the certain terms of its NPDES permits.

**2. The Activity Alleged to Constitute a Violation**

River Watch contends that from July 1, 2012 to July 1, 2017, Oceanside has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

**A. Sanitary Sewer Overflows, Reporting, and Mitigation**

**1. Sanitary Sewer Overflows**

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching Oceanside's wastewater treatment plant, are alleged to have occurred both on the dates identified in the California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on other dates when SSOs were witnessed but for which no reports were filed by Oceanside, all in violation of the CWA.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as 74, with 6,407,167 "Total Vol. of SSOs (gal)" discharged into the environment. Of this total volume, Oceanside admits at least 5,663,452 gallons, or 86% of the total, reached a surface water.

All of Oceanside's SSOs that violate either NPDES Permit No. CA0107433 or CAS0109266 are violations of CWA § 301(a), 33 U.S.C. § 1311(a), pursuant to CWA § 505(a), 33 U.S.C. § 1365(a). River Watch contends Oceanside is understating the significance of the impacts of the violations by failing to post health warning signs for the discharges reaching a surface water.

**2. Inadequate Reporting of Discharges**

River Watch believes many of the SSOs reported by Oceanside as having been contained without reaching a surface water did in fact discharge to surface waters; and those reported as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the times reported by Oceanside as

receiving notification of an SSO, the times of its response, and the times at which the SSO ended too often appear as unlikely estimations. A review of the records indicates a much greater percentage of SSOs reached a drainage to a surface water or a surface water itself, than reported by Oceanside. The remaining gallons were discharged into the environment where the discharges may have posed both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to health and the environment.

### 3. Failure to Mitigate Impacts

River Watch contends Oceanside fails to adequately mitigate the impacts of SSOs. Oceanside is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires Oceanside to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As Oceanside is severely underestimating SSOs which reach surface waters, River Watch contends Oceanside is not conducting sampling on most SSOs.

EPA's "Report to Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of Oceanside's SSOs. Neighboring waterways include sensitive habitat areas. There is no record of Oceanside performing any analysis of the impact of SSOs on habitat of protected species, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

#### B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system and associated treatment ponds results in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from Oceanside's collection system and its treatment ponds either directly or via hydrologically connected groundwater to surface waters including the Pacific Ocean, Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, San Luis River and Whelan Lake. Due to SSOs, surface waters become contaminated with pollutants including human pathogens. Chronic failures in Oceanside's collection system pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from Oceanside's collection system or treatment ponds is a violation of its NPDES permits and thus a violation of the CWA.

C. Effluent Limitation Violations

Oceanside's Self-Monitoring Reports ("SMRs") identify the following violations of NPDES Permit No. CA0107433 from June 21, 2012 through March 31, 2017:

03/31/2017 Settleable Solids Monthly Average  
03/25/2017 Settleable Solids Weekly Average  
03/24/2017 Settleable Solids Instantaneous  
03/22/2017 Settleable Solids Instantaneous  
03/20/2017 Settleable Solids Instantaneous  
02/13/2017 Deficient Reporting  
01/31/2017 Settleable Solids Monthly Average  
01/24/2017 Surface Water S2 Enterococcus  
01/24/2017 Surface Water S1 Coliform density  
01/24/2017 Surface Water S5 Enterococcus  
01/24/2017 Surface Water S3 Fecal coliform  
01/24/2017 Surface Water S2 Fecal coliform  
01/24/2017 Surface Water S5 Coliform Density  
01/24/2017 Surface Water S4 Fecal coliform  
01/24/2017 Surface Water S3 Enterococcus  
01/24/2017 Surface Water S2 Total coliform  
01/24/2017 Surface Water S1 Enterococcus  
01/24/2017 Surface Water S4 Enterococcus  
01/24/2017 Surface Water S1 Fecal coliform  
01/17/2017 Surface Water A3-M Enterococcus  
01/07/2017 Settleable Solids Weekly Average  
01/05/2017 Settleable Solids Instantaneous

08/31/2016 Total Suspended Solids (TSS)  
08/03/2016 Deficient Monitoring  
07/08/2016 Total Coliform Daily Maximum  
06/15/2016 Sanitary Sewer Overflow/Spill/  
05/22/2016 Total Coliform Daily Maximum  
05/01/2016 Total Suspended Solids (TSS)  
01/30/2016 Settleable Solids Weekly Average  
01/26/2016 Settleable Solids Instantaneous  
01/25/2016 Settleable Solids Instantaneous  
01/15/2016 Carbonaceous Bio  
01/02/2016 Unauthorized Discharge  
01/01/2016 Late Report  
12/17/2015 Deficient Reporting  
11/30/2015 Total Suspended Solids (TSS)  
09/04/2015 Late Report  
07/03/2015 Sanitary Sewer Overflow/Spill  
06/26/2015 Failure to Comply with Order Conditions  
06/15/2015 Sanitary Sewer Overflow/Spill  
05/17/2015 Unauthorized Discharge  
03/24/2015 Total Coliform Daily Maximum  
09/05/2014 Deficient Monitoring  
09/05/2014 Deficient Monitoring  
09/03/2014 pH Instantaneous Minimum  
09/02/2014 Late Report  
07/31/2014 Deficient Monitoring  
07/31/2014 Deficient Monitoring  
07/30/2014 Deficient Monitoring  
07/30/2014 Deficient Monitoring  
03/18/2014 Total Coliform Daily Maximum  
01/31/2014 Late Report  
08/06/2013 - Deficient Monitoring  
01/30/2013 - Late Report  
10/17/2012 Deficient Reporting

D. Failure to Comply with Receiving Water Limitations

Oceanside's aquatic environment has many beneficial uses as defined in the RWQCB-San Diego Basin Plan. Discharges in excess of receiving water and groundwater limitations reaching these waters cause prohibited pollution by unreasonably affecting beneficial uses. The coastal waters of the Pacific Ocean, as well as Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, San Luis River and Whelan Lake, contain many sensitive species and support

important recreational value. Receiving water limitations are based on water quality objectives contained in the RWQCB-San Diego Basin Plan and California Ocean Plan, and are incorporated by reference into NPDES Permit No. CA0107433. The Pacific Ocean outfall is referred to in NPDES Permit No. CA0107433 as the Oceanside Ocean Outfall or OOO. In order to protect beneficial uses, Oceanside must insure that its discharges not violate the following receiving water standards for the Pacific Ocean:

1. Bacterial Characteristics

- a. Within a zone bounded by the shoreline and a distance of 3 nautical miles from the shoreline, including all kelp beds, the following bacterial objectives shall be maintained throughout the water column. The zone of initial dilution for ocean outfall is excluded.

30-day Geometric Mean – The following standards are based on the geometric mean of the five most recent samples from each site:

- i. Total coliform density shall not exceed 1,000 per 100 ml;
- ii. Fecal coliform density shall not exceed 200 per 100 ml; and
- iii. Enterococcus density shall not exceed 35 per 100 ml.

Single Sample Maximum:

- i. Total coliform density shall not exceed 10,000 per 100 ml;
- ii. Fecal coliform density shall not exceed 400 per 100 ml;
- iii. Enterococcus density shall not exceed 104 per 100 ml; and
- iv. Total coliform density shall not exceed 1,000 per 100 ml when the fecal coliform/total coliform ratio exceeds 0.1.

- b. The Initial Dilution Zone for any wastewater outfall shall be excluded from designation as kelp beds for purposes of bacterial standards. Adventitious assemblages of kelp plants on waste discharge structures (e.g., outfall pipes and diffusers) do not constitute kelp beds for purposes of bacterial standards.

- c. At all areas where shellfish may be harvested for human consumption, as determined by the San Diego Water Board, the median total coliform density shall not exceed 70 per 100 ml throughout the water column, and not more than 10 percent of the samples shall exceed 230 per 100 ml.

2. Physical Characteristics

- a. Floating particulates and grease and oils shall not be visible.
- b. The discharge of waste shall not cause aesthetically undesirable discoloration of the ocean surface.
- c. Natural light shall not be significantly reduced at any point outside the initial dilution zone as a result of the discharge of waste.
- d. The rate of deposition of inert solids and the characteristics of inert solids in the ocean sediments shall not be changed such that benthic communities are degraded.

3. Chemical Characteristics

- a. The dissolved oxygen concentration shall not at any time be depressed more than 10 percent from that which occurs naturally, as the result of the discharge of oxygen demanding waste materials.
- b. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.
- c. The dissolved sulfide concentration of waters in and near sediments shall not be significantly increased above that present under natural conditions.
- d. The concentration of substances set forth in Chapter II, Table B of the Ocean Plan, shall not be increased in marine sediments to levels that would degrade indigenous biota.
- e. The concentration of organic materials in marine sediments shall not be increased to levels that would degrade marine life.
- f. Nutrient materials shall not cause objectionable aquatic growths or degrade indigenous biota.
- g. Numerical water quality objectives established in Section II, Table B of the California Ocean Plan, shall not be exceeded outside of the zone of initial dilution as a result of the discharges from the Facility.



4. Biological Characteristics

- a. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.
- b. The natural taste, odor, color of fish, shellfish, or other marine resources used for human consumption shall not be altered.
- c. The concentration of organic materials in fish, shellfish, or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

5. Radioactivity

Discharge of radioactive waste shall not degrade marine life.

River Watch finds insufficient information in the public record demonstrating that Oceanside has monitored for and complied with these receiving water standards. River Watch is understandably concerned regarding the effects of both surface and underground exceedances of Oceanside's NPDES permit limitations to beneficial uses applicable to the Pacific Ocean as well as to Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, San Luis River and Whelan Lake.

**3. The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is the City of Oceanside.

**4. The Location of the Alleged Violation**

Oceanside lies on the northern coast of San Diego County, 35 miles north of San Diego and 83 miles south of Los Angeles. It is bordered by the Pacific Ocean to the west, Camp Pendleton Marine Corps Base to the north, Carlsbad to the south, and Vista and unincorporated portions of San Diego County to the east. City boundaries cover approximately 44 square miles.

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for Oceanside which relate to its ownership and operations of the collection systems and Facilities as described in this Notice.

**5. Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is July 1, 2012 through July 1, 2017. This Notice also includes all violations of the CWA by Oceanside which occur during and after this Notice period up to and including the time of trial.

**6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472.

River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

Jack Silver, Esq.  
Law Office of Jack Silver  
708 Gravenstein Highway North, #407  
Sebastopol, CA 95472  
Tel. 707-528-8175  
Email: [jsilverEnvironmental@gmail.com](mailto:jsilverEnvironmental@gmail.com)

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**RECOMMENDED REMEDIAL MEASURES**

River Watch looks forward to meeting with Oceanside staff to tailor remedial measures to the specific operation of the Facilities and associated sewage collection systems. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

A. Remedial Measures For SSOs

1. Definitions

- a. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television (“CCTV”) inspections for sewer lines; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as those in the Pipeline Assessment and Certification Program (“PACP”) rating system, developed by the National Association of Sewer Service Companies.
- b. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.
- c. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective, could allow exfiltration to that surface water. Whether a line is “sufficiently proximate” will depend upon a number of factors including age, composition and PACP rating of the sewer line in question, the nature of the defect, soil types, and groundwater patterns.
- d. Significantly Defective: A sewer pipe is considered Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
  - 5 – Most significant defect
  - 4 – Significant defect
  - 3 – Moderate defect
  - 2 – Minor to moderate defect
  - 1 – Minor defect.

2. Recommended Measures

- a. Sewer Collection System Investigation and Repair
  - i. The repair or replacement, within two (2) years, of all sewer lines in Oceanside’s sewer collection system sufficiently proximate to a surface water

and determined to pose a risk of exfiltrating to that surface water, which sewer lines have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

ii. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

iii. Within two (2) years after completion of the Surface Water Condition Assessment above, Oceanside will:

- Repair or replace all sewer lines found to be Significantly Defective;
- Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in an SSO, or, if in Oceanside's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;
- Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If Oceanside determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, Oceanside shall complete such repair or replacement within two (2) years after the last CCTV cycle.

iv. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, Oceanside shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.

v. Provision in Oceanside's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

b. SSO Reporting and Response

i. Modification of Oceanside's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

- The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered;
- For Category I and II Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began; and,
- Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

ii. Pursuant to Oceanside's legal obligation under the Statewide WDR, Section D.7.v., Oceanside shall obtain a qualified biologist to develop and implement an adequate sampling program to determine the nature and impact of all SSOs. At a minimum, Oceanside will sample to determine the nature and impact of any SSO, regardless of size, which poses imminent and substantial endangerment to health or the environment.

iii. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from Oceanside's website to the CIWQS SSO Public Reports. Notification shall be given by Oceanside to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

c. Lateral Inspection/Repair Program

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

- ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
  - iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;
  - iv. Upon replacement or repair of any part of the sewer lateral;
  - v. Upon issuance of a building permit with a valuation of \$50,000.00 or more; or,
  - vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
- d. Testing Collection System and Pond Integrity
- i. Perform human marker testing on surface waters adjacent to sewer lines proximate to surface water to test for sewage contamination from exfiltration.
  - ii. Perform human marker testing on surface waters adjacent to treatment ponds proximate to surface waters to test for contamination from exfiltration.
  - iii. Conduct a mass balance analysis of the treatment ponds to determine the extent of loss of sewage, partially treated sewage or effluent.
- e. Remedial Measures for Compliance with NPDES Permit Requirements
- i. Within one (1) year after the date of this Notice, Oceanside will complete lab scale pilot testing of treatment technologies, including source control, for bringing its discharges within the limits set forth in its NPDES permits.
  - ii. Within two (2) years after the date of this Notice, Oceanside will complete large scale pilot testing of treatment technologies, including source control, for bringing its discharges within the limits set forth in its NPDES permits.

iii. Within three (3) years after the date of this Notice, Oceanside will install treatment technologies for bringing its discharges within the limits set forth in its NPDES permits.

f. Receiving Water Limitations

Within one (1) year after the date of this Notice Oceanside will implement protocols for affirmatively demonstrating its compliance with the receiving water limitations mandated in Oceanside's NPDES permits.

g. Chemical Root Control

i. Oceanside shall use chemicals approved and/or recommended by the EPA or RWQCB-San Diego. All application of chemicals shall comply with the recommendations of the manufacturer of the chemical and as required by Cal-OSHA. Within one (1) year from the date of this Notice, Oceanside shall develop methods for the application of root control agents that lessen the incident of these agents escaping the collection system. These methods shall include:

- Blocking the line upstream and down-stream of the area of application;
- Using root control agents that have a half-life of sixty (60) days or less and contain breakdown products which are non-toxic to aquatic plants or animals;
- Developing and implementing best management practices to preclude the escape of the root control agent from the sewer line;
- Record keeping that includes identifying the PACP rating in the sewer line section being treated, a map identifying locations where treatment occurs, the chemical(s) used including the MSDS sheets, and the amounts applied;
- Not applying any root control agent to a sewer line that has a known PACP rating of 4 or 5 unless Oceanside can ensure that none of the root control agent will escape the sewer line through any line defect;
- Not knowingly applying any root control agent in any location where groundwater can be contaminated via infiltration or exfiltration; and,



- Verifying through CCTV'ing of the sewer lines prior to the expiration of the applicable warranty that the root control agent applied worked effectively to remove the identified root(s).
- ii. Oceanside shall post on its website a map showing where a root control agent may be used throughout the sewer collection system and provide a contact number for Oceanside to respond to questions from the public.
- iii. The requirements set forth in this paragraph shall be included in Oceanside's updated Sewer System Management Plan ("SSMP") within six (6) months after the date of this Notice.

3. SSMP

Oceanside's SSMP shall be kept current and properly certified. All documents relating to the certification shall be provided on Oceanside's website.

4. Financial Assurance.

Oceanside shall ensure that no funds allocated to its Water Utilities Division shall be improperly transferred to any other city department or division.

5. Staff Training.

Oceanside shall make best efforts to train and certify all city sanitation staff through the California Water Environment Association in "collection system maintenance." All current sewer maintenance crew members shall, to the greatest extent possible, obtain a Certification of Collections I within one year after assignment. All new hires in the sewer maintenance crew shall receive such certification and training, provided such certification and training does not interfere with their Union contracts.

## **CONCLUSION**

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource may be specifically impaired by Oceanside's alleged violations of the CWA as set forth in this Notice.



CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch strongly encourages Oceanside to contact River Watch within **twenty (20)** days after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen’s suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

### Service List

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

✓ Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

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City of Oceanside  
300 N Coast Hwy.  
Oceanside, CA, 92054-2824